American Medical Response, Inc. *and* Allen Bryer, *and* Charles Williams, *and* George A. Gardiner Jr.

International Association of EMTS & Paramedics, NAGE, AFL–CIO and International Association of EMTS & Paramedics, Local 1, NAGE, AFL–CIO *and* Allen Bryer *and* Charles Williams *and* George A. Gardiner Jr. Cases 1–CA–35553, 1–CA–35578, 1–CA–35600, 1–CB–9098, 1–CB–9101, and 1–CB–9106

September 20, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On October 30, 1998, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondents filed briefs answering the General Counsel's exceptions. Subsequently, the General Counsel filed a brief in reply to the Respondents' answering briefs, including a motion to strike portions of Respondent American Medical Response's answering brief. Respondent American Medical Response filed an opposition to the motion to strike.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs,[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions as clarified below, and to adopt the recommended Order as modified.[3]

This is essentially an accretion case. The judge found that, following a merger of two companies into Respondent American Medical Response (AMR), some of the employees from the other companies were properly accreted into the bargaining unit of AMR employees represented by Respondent International Association of EMTs & Paramedics (IAEP), but that other employees were not properly accreted into the unit. With respect to the latter group, the judge found that Respondents AMR and IAEP violated the Act to the extent that they entered into a recognition agreement and applied their existing collective-bargaining agreement to those new employees. However, the judge found that, unlike Respondent IAEP, Respondent IAEP Local 1 (Local 1) did not obtain recognition from AMR or apply the contract to those employees who were not properly accreted to the unit. He therefore concluded that Local 1 did not violate the Act.

The General Counsel excepts to the judge's finding that some of the employees of the merged companies legitimately were accreted into the bargaining unit. The General Counsel also excepts to the judge's failure to find that Local 1, as a joint collective-bargaining representative with IAEP, was equally liable and violated the Act as alleged. For the reasons set forth below, we affirm the judge's finding that certain employees were properly accreted. However, contrary to the judge, we find that Local 1 violated the Act in the same manner as IAEP with respect to those employees who were not properly accreted.[4]

I. BACKGROUND

AMR operates emergency medical service (EMS) trucks. It is a nation-wide business. Its operation in New England, and especially in eastern Massachusetts, is at issue in this case. In February 1997,[5] a series of mergers dating back to 1995 culminated in AMR's absorption of two Massachusetts EMS companies, Med-Trans Ambulance Company and Brewster Ambulance Company. Med-Trans and Brewster were nonunion companies. AMR had a preexisting collective-bargaining relationship with the Union.[6] The term of their most recent collective-bargaining agreement was from July 6, 1996, to July 5, 2000. This contract included a union-security provision. The contractual bargaining unit primarily covered paramedics, emergency medical technicians, and wheelchair car drivers who were employed by AMR in Maine, New Hampshire, Rhode Island, and eastern Massachusetts, including the Worcester area. At the time of

[1] We grant the General Counsel's motion to strike from Respondent American Medical Response's answering brief all references disputing the judge's finding that American Medical Response is not a "health care institution" within the meaning of Sec. 2(14) of the Act. No exceptions pursuant to Sec. 102.46 of the Board's Rules and Regulations were filed to this finding. Accordingly, the matter is not before us and American Medical Response's contentions in this respect are inappropriate.

[2] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We will modify the recommended Order to reflect the addition of International Association of EMTs & Paramedics, Local 1 as a liable party, as explained below, and also more generally to reflect current Board remedial practice and precedent.

[4] No exceptions were filed by AMR and IAEP to the violations found by the judge.

[5] All dates hereafter are in 1997.

[6] For ease of reference, "the Union" refers here to both Respondent IAEP and Respondent Local 1. As discussed more fully in the next section, we find that the collective-bargaining agreement was with both IAEP and Local 1 and that they are joint collective-bargaining representatives.

the absorption of Med-Trans and Brewster, the contract covered about 1300 AMR employees in multiple EMS station locations. At the same time there were about 400 Brewster employees and 360 Med-Trans employees, also at multiple EMS stations, who worked in job classifications of the type covered by the contract.

After February, AMR proceeded to integrate the Med-Trans and Brewster operations with its own. Two new, managerially autonomous divisions of AMR's national operation were formed. Newly constituted division 12 was coextensive with the geographic scope of the contractual bargaining unit, except for the exclusion of the Worcester area. For business reasons, Worcester was placed in a new division 13, which also included western Massachusetts, Connecticut, and New York. By summer, the integration was well under way. On July 29, AMR and the Union signed an agreement providing for recognition of the Union as the collective-bargaining representative of the former Med-Trans and Brewster employees who worked within the scope of the contractual bargaining unit, regardless of whether they were assigned to division 12 or division 13. Pursuant to the agreement's terms, the Respondents subsequently applied the collective-bargaining agreement to the new employees in the contractual unit. Three of these employees filed unfair labor practice charges. The General Counsel issued a complaint alleging that these and the other previously unrepresented former employees of Med-Trans and Brewster were improperly accreted into the bargaining unit and that, as a consequence, AMR violated Section 8(a)(1), (2), and (3) and the Union violated Section 8(b)(1)(A) and (2).

Preliminary to addressing the accretion question, the judge found that a new bargaining unit limited to the scope of division 12 was appropriate. In light of this finding, and the level of common interests among the employees in that division, he found that former Med-Trans and Brewster employees working within division 12 had been appropriately accreted into this new unit. However, to the extent that AMR's July 29 recognition of the IAEP had reached into division 13 (i.e., to Med-Trans employees in the Worcester area, which was covered by the contractual unit),[7] he found that accretion was improper, and that AMR and IAEP had, to this extent, violated the Act as alleged. As noted above, no exceptions have been filed to these violations found by the judge. However, the General Counsel does except to the judge's finding that the Med-Trans and Brewster employees assigned to Division 12 were properly accreted to the contractual unit, and to his finding that Local 1 did not violate the Act in the same manner as IAEP.

[7] Of the employees whose companies were merged into AMR, only former Med-Trans employees, not those formerly employed by Brewster, were working in the Worcester area at the time of recognition.

II. THE JUDGE'S ACCRETION FINDINGS

After careful consideration, we affirm the judge's finding that the Med-Trans and Brewster employees in division 12 were properly accreted into the contractual unit. Contrary to the General Counsel, we find that the judge's overall analysis applies the appropriate accretion factors, and is consistent with the goal of balancing two competing statutory interests: the right of employees to choose their collective-bargaining representative, and the maintenance of stable collective-bargaining relationships. See, e.g., *Safety Carrier*, 306 NLRB 960, 969 (1992).

However, there are two aspects of his analysis that we believe require clarification. First, we find that the judge erred by effectively creating a *new* bargaining unit rather than relying on the existing unit defined by the parties' collective-bargaining agreement. "'An accretion is simply the addition of a relatively small group of employees *to an existing unit* where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.'" *Judge & Dolph, Ltd.,* 333 NLRB 175, 181 (2001), quoting *Lammart Industries v. NLRB*, 578 F.2d 1223, 1225 fn. 3 (7th Cir. 1978) (emphasis added). See also *Archer Daniels Midland Co.*, 333 NLRB 673, 676 (2001). There is no dispute in this case that the contractual unit was a previously existing, appropriate bargaining unit. Thus, in affirming the judge, we clarify that we are doing so because the former Med-Trans and Brewster employees who now work within division 12 were legitimately accreted into the existing contractual unit based on the level of their community of interest with the unit employees. In contrast, those former employees of Med-Trans working in the Worcester area of division 13 were improperly accreted to the contractual unit because they lacked a sufficient community of interest with the employees in the contractual unit, the vast majority of whom worked in division 12.[8]

[8] A number of AMR employees historically represented by the Union in the contractual unit were, like the Med-Trans employees above, working in the Worcester area and therefore within Division 13. Their continued representation by the Union is unaffected by our findings here. Thus, no unfair labor practice or representation issues concerning these employees, in light of AMR's postmerger changes, have been raised in this proceeding. Compare *Crown Zellerbach Corp.*, 246 NLRB 202, 203–204 (1979).

In these circumstances, one significant problem with the new unit found by the judge—i.e., a unit exactly coextensive with Division 12—lies with these AMR employees stationed in the Worcester area. The judge's unit would have excluded these employees, thereby depriving them of the union representation they historically enjoyed.

Second, the judge's accretion analysis did not distinguish between events before and events after AMR's July 29 recognition of the Union. We agree with the General Counsel's contention that the question whether the Med-Trans and Brewster employees constituted an appropriate accretion to the AMR bargaining unit must be determined on the facts that existed on the date of the recognition of the Union. See, e.g., *Brooklyn Hospital Center*, 309 NLRB 1163, 1182 (1992), enfd. sub nom. *Service Employees Local 144 v. NLRB*, 9 F.3d 218 (2d Cir. 1993).

In this case, the unfair labor practice allegations center on the status quo as of July 29; factors favoring accretion that arose after the recognition of the Union are not significant for determining violations of the Act. Accordingly, we do not rely on the following community-of-interest facts which contributed to the judge's conclusion that there was a proper accretion: health benefits, holidays, wages and bonuses, and a retirement plan all shared in common among the AMR, Med-Trans, and Brewster employees working in division 12. These were all controlled by the collective-bargaining agreement and not applied to the Med-Trans and Brewster employees until after AMR recognized the Union. Common uniforms as well were not available until after the recognition.

Nevertheless, the facts which were in place as of July 29 are sufficient for us to affirm the judge's finding of a legitimate accretion. For example, accretion is supported by AMR's implementation of its "system status management" program prior to recognition, which significantly affected dispatching of assignments, employee contacts, and field supervision within division 12. Under this program, posting of trucks within division 12 to particular areas in the field was based on anticipated client-call volume. Such postings could, consistent with call volume, change from day to day and from time to time during the day. Thus, employees spent most of their work time on the road within the division, rather than at their designated stations. The identity of their field supervisors and their interaction with unit employees assigned to other trucks depended on their location at any particular time. Accordingly, the institution of this program created common field supervision, a common dispatching system, and a significant breadth of contact between unit employees in division 12.

In addition, as of July 29 the employees of division 12 shared the same skills and job functions; standardized hiring and disciplinary policies; common work scheduling; common training and orientation; a common system of employee identification numbers; and common servicing of health care facilities under contract with AMR. Further, employees were permanently transferred because of the closure and consolidation of stations following AMR's absorption of Med-Trans and Brewster. This was done regardless of union affiliation. And temporary transfers occurred on a daily basis due to illness, vacation, and other absences. Finally, labor relations and operations were controlled at the division level, and division 12 management consisted of former Med-Trans and Brewster managers as well as those previously with AMR.

In light of the circumstances in place on July 29, we agree with the judge that neither the Med-Trans nor the Brewster employees working in division 12 retained any significant group identity separate from the AMR employees, and that their community of interest with the AMR employees was more than sufficient to establish an appropriate basis for accretion. Accordingly, we find that they were properly accreted into the contractual bargaining unit at that time, and that Respondents did not violate the Act with regard to them.

III. THE LIABILITY OF RESPONDENT LOCAL 1

As discussed, the judge found that on July 29 AMR agreed to recognize IAEP and to extend coverage of their current collective-bargaining agreement to employees of the merged companies. In the July 29 agreement, and in the collective-bargaining contract itself, AMR explicitly recognized IAEP as the bargaining representative of AMR's employees in the defined bargaining unit. The judge therefore concluded that it was not proper to hold Local 1 liable for any alleged violations involving the July 29 recognition and subsequent application of the contract. The General Counsel argues that because IAEP and Local 1 were joint collective-bargaining representatives, Local 1 is equally liable for unlawfully obtaining recognition and applying the contract to the division 13 employees who were improperly accreted.

The record supports the General Counsel's contention. It is true that only IAEP is named in the July 29 recognition agreement and in the recognition clause of the collective-bargaining agreement. However, the cover page of the collective-bargaining contract states that the contract is between AMR and Local 1, and three Local 1 officials signed the collective-bargaining agreement as representatives of the Local.[9] In addition, Local 1 admitted at the hearing that it maintained and enforced the collective-bargaining agreement subsequent to July 29. Further, a letter dated October 10 from IAEP to AMR concerning upcoming negotiations states that "the Union

[9] The attorney for both IAEP and Local 1 in this proceeding also signed the collective-bargaining agreement, presumably as the sole representative of IAEP.

shall be represented by an agent from [IAEP] and Local 1's bargaining committee." Finally, a sample union dues check-off authorization card in the record identifies "IAEP Local 1" as the employees' collective-bargaining representative.

In these circumstances, we find that IAEP and Local 1 were joint collective-bargaining representatives. See *Tree-Free Fiber Co.*, 328 NLRB 389 fn. 4, 398–399 (1999); *BASF-Wyandotte Corp.*, 276 NLRB 498, 504–505 (1985). Accordingly, Local 1, like IAEP, violated Section 8(b)(1)(A) when it obtained recognition from AMR on July 29, and violated Section 8(b)(2) when it subsequently extended, maintained and enforced the parties' collective-bargaining agreement, which contained union-security provisions, with respect to those employees who were improperly accreted into the bargaining unit.[10]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set out in full below and orders that

A. The Respondent, American Medical Response, Inc. (AMR), Natick, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing International Association of EMTs & Paramedics (IAEP) and IAEP Local 1 (Local 1) as the collective-bargaining representatives for former employees of Med-Trans Ambulance Company (Med-Trans) working in AMR's division 13 and within the scope of the bargaining unit set forth in the parties' collective-bargaining agreement, unless and until these Unions have been certified by the Board as the representatives of these employees in an appropriate unit.

(b) Extending, maintaining, and enforcing its collective-bargaining agreement with IAEP and Local 1, including its union-security provisions, with respect to former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit set forth in the agreement, unless and until these Unions have been certified by the Board as the representatives of these employees in an appropriate unit; provided however, that nothing in this Order shall require the withdrawal or elimination of any wage increases or other benefits, terms, or conditions of employment that may have been established pursuant to the collective-bargaining agreement with respect to these employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold recognition from IAEP and Local 1 as the collective-bargaining representatives for former Med-Trans employees working in AMR's Division 13 and within the scope of the bargaining unit set forth in the collective-bargaining agreement, unless and until the Unions have been certified by the Board as the representatives of these employees in an appropriate unit.

(b) Within 14 days after service by the Region, post at its facility in Natick, Massachusetts, copies of the attached notice marked "Appendix A."[11] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all former Med-Trans employees employed by the Respondent at any time since July 29, 1997, in its division 13 and within the scope of the bargaining unit set forth in the collective-bargaining agreement.

(c) Post at the same places and under the same conditions set forth in (b) above, as they are forwarded by the Regional Director, copies of Respondent IAEP's and Respondent Local 1's notices, marked "Appendix B" and "Appendix C" respectively.

(d) Within 14 days after service by the Region, mail signed copies of the attached notice marked "Appendix A" to the Regional Director for posting at the offices and meeting halls of Respondents IAEP and Local 1.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[10] In his decision, the judge found that no dues had been collected and he refrained from providing the normal dues reimbursement remedy. No party has taken issue with this limitation of the remedy.

[11] If this Order is enforced by a United States Court of Appeals, the words in the attached notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

B. The Respondent, International Association of EMTs & Paramedics, NAGE, Quincy, Massachusetts, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Obtaining recognition from Respondent AMR and acting as the collective-bargaining representative for former Med-Trans employees working in AMR's Division 13 and within the scope of the bargaining unit of the parties' collective-bargaining agreement, unless and until it has been certified by the Board as the representative of these employees in an appropriate unit.

(b) Extending, maintaining, and enforcing its collective-bargaining agreement with AMR, including its union-security provisions, with respect to former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of the agreement, unless and until it has been certified by the Board as the representative of these employees in an appropriate unit.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its office and meeting halls copies of the attached notice marked "Appendix B."[12] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Post at the same places and under the same conditions set forth in (a) above, as they are forwarded by the Regional Director, copies of Respondent AMR's and Respondent Local 1's notices, marked "Appendix A" and "Appendix C" respectively.

(c) Within 14 days after service by the Region, mail signed copies of the attached notice marked "Appendix B" to the Regional Director for posting at Respondent AMR's facilities and the office and meeting halls of Respondent Local 1.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[12] See fn. 11, supra.

C. The Respondent, International Association of EMTs & Paramedics, Local 1, NAGE, Quincy, Massachusetts, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Obtaining recognition from Respondent AMR and acting as the collective-bargaining representative for former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of the parties' collective-bargaining agreement, unless and until it has been certified by the Board as the representative of these employees in an appropriate unit.

(b) Extending, maintaining, and enforcing its collective-bargaining agreement with AMR, including its union-security provisions, with respect to former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of the agreement, unless and until it has been certified by the Board as the representative of these employees in an appropriate unit.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its office and meeting halls copies of the attached notice marked "Appendix C."[13] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Post at the same places and under the same conditions set forth in (a) above, as they are forwarded by the Regional Director, copies of Respondent AMR's and Respondent IAEP's notices, marked "Appendix A" and "Appendix B" respectively.

(c) Within 14 days after service by the Region, mail signed copies of the attached notice marked "Appendix C" to the Regional Director for posting at Respondent AMR's facilities and the office and meeting halls of Respondent IAEP.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[13] See fn. 11, supra.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize International Association of EMTs & Paramedics (IAEP), and International Association of EMTs & Paramedics, Local 1 (Local 1), as the collective-bargaining representatives for former employees of Med-Trans Ambulance Company (Med-Trans), working in our division 13 and within the scope of the bargaining unit set forth in our collective-bargaining agreement with these Unions, unless and until these Unions have been certified by the Board as the representatives of these employees in an appropriate unit.

WE WILL NOT extend, maintain, and enforce our collective-bargaining agreement with IAEP and Local 1, including its union-security provisions, with respect to former Med-Trans employees working in our division 13 and within the scope of the bargaining unit set forth in the agreement, unless and until these Unions have been certified by the Board as the representatives of these employees in an appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold recognition from IAEP and Local 1 as the collective-bargaining representatives for former Med-Trans employees working in our division 13 and within the scope of the bargaining unit set forth in our collective-bargaining agreement with these Unions, unless and until these Unions have been certified by the Board as the representatives of these employees in an appropriate unit.

AMERICAN MEDICAL RESPONSE, INC.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT obtain recognition from American Medical Response, Inc. (AMR), or act as the collective-bargaining representative for former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of our collective-bargaining agreement with AMR, unless and until we have been certified by the Board as the representative of these employees in an appropriate unit.

WE WILL NOT extend, maintain, or enforce our collective-bargaining agreement with AMR, including its union-security provisions, with respect to former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of the agreement, unless and until we have been certified by the Board as the representative of these employees in an appropriate unit.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

INTERNATIONAL ASSOCIATION OF EMTS & PARAMEDICS

APPENDIX C

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT obtain recognition from American Medical Response, Inc. (AMR), or act as the collective-bargaining representative for former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of our collective-bargaining agreement with AMR, unless and until we have been certified by the Board as the representative of these employees in an appropriate unit.

WE WILL NOT extend, maintain, or enforce our collective-bargaining agreement with AMR, including its union-security provisions, with respect to former Med-Trans employees working in AMR's division 13 and within the scope of the bargaining unit of the agreement, unless and until we have been certified by the Board as the representative of these employees in an appropriate unit.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

INTERNATIONAL ASSOCIATION OF EMTS & PARAMEDICS, LOCAL 1

Laura A. Sacks, Esq. and *Sara R. Lewenberg, Esq.,* for the General Counsel.

Arthur P. Menard, Esq. and *Terence P. McCourt, Esq.,* of Washington, D.C. and Boston, Massachusetts, for Respondent Employer.

Wendy M. Bittner, Esq. and *Joseph G. Donnellan, Esq*., of Boston, Massachusetts, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me in Boston, Massachusetts, on May 18, 19, 20, 21, and June 24, 1998, pursuant to a consolidated complaint and notice of hearing (the complaint) issued by the Regional Director for Region 1 of the National Labor Relations Board (the Board) on February 25, 1998. The complaint, based on original charges filed on various dates in 1997,1 and certain amendments thereto filed on various dates in 1998, by individual employees Allen Bryer, Charles Williams, Sheila O'Malley,2 and George A. Gardiner Jr., alleges that American Medical Response, Inc. (Respondent AMR or AMR), and International Association of EMT's & Paramedics, NAGE, AFL–CIO (Respondent IAEP or Union), and International Association of EMT's & Paramedics, Local 1, NAGE, AFL–CIO (Local 1), has engaged in certain violations of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act).

Issues

The complaint alleges that Respondent AMR granted recognition on July 29, to Respondent IAEP for former unrepresented employees and extended, maintained, and enforced its current collective-bargaining agreement that contains a union-security clause to these unrepresented employees even though Respondent IAEP did not represent an uncoerced majority of employees in an appropriate unit.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent AMR and Respondent IAEP, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent AMR, a corporation, is engaged in the operation of an ambulance service, with offices and places of business throughout the United States, including an office and place of business in Natick, Massachusetts, where it annually purchased and received goods and materials at its facility in excess of $50,000 directly from points outside the Commonwealth of Massachusetts. Respondent AMR admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union and Local 1 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In July 1995, a company known as Chaulk Services, Inc. and Ambulance Systems of America, Inc. (ASA) merged.3 In October 1995, Respondent AMR acquired these merged companies. On January 4, a company known as Laidlaw, Inc. (Laidlaw), put forth a tender offer to acquire Respondent AMR, and on February 19, Respondent AMR became a wholly owned subsidiary of Laidlaw.

In January 1997, Med-Trans Ambulance Co. (Med-Trans) acquired Brewster Ambulance Co. (Brewster) and later in January 1997, Laidlaw acquired Med-Trans. Accordingly, when Laidlaw acquired Respondent AMR, it now owned Respondent AMR, Med-Trans, and Brewster.

In 1996, Respondent IAEP and Respondent AMR entered into a 4–year (July 6, 1996–July 5, 2000) collective-bargaining agreement for AMR employees employed in Maine, New Hampshire, Rhode Island, and eastern Massachusetts, including the metropolitan Worcester area for the following unit:

> The Employer recognizes the Union as the exclusive bargaining representative for the purpose of collective bargaining for all full-time and part-time emergency medical technicians (EMT's) and paramedics (including field trainers and lead technicians), cardiac technicians, intermediates, telecommunications operators, dispatchers, and wheel chair car drivers, including employees, who regularly average 4 or more hours of work per week, employed by American Medical Response of Massachusetts, Inc.
>
> Excluded from this Agreement are all other employees, including but not limited to, buildings and ground employees, maintenance employees, office clerical employees, professional employees, guards, managerial employees, all supervisors as defined in the Act, and all employees of Commonwealth Ambulance Service, Inc. which ambulance service has a collective-bargaining Agreement with OPEIU, Local #6.

Before February 19, the parties' collective-bargaining agreement covered approximately 1300 AMR employees. At the time of the acquisition, Med-Trans employed approximately 360 unrepresented employees while Brewster's unrepresented employees numbered around 400.

On March 17, Respondent IAEP filed a unit clarification petition with the Board in Case 1–UC–713, but subsequently withdrew it. On May 16, Respondent IAEP filed a second unit clarification petition in Case 1–UC–716, and a hearing was conducted before a Board hearing officer on June 10. On June 12, Teamsters Local Union 653 filed a representation petition in Case 1–RC–20638, seeking to represent EMT's and paramedics in AMR's South Division station locations. On June 25, Teamsters Local 25 filed a representation petition in Case 1–RC–20642, seeking to represent EMT's and paramedics in AMR's South Boston, Hyde Park, Readville, Dedham, Weymouth, and Quincy station locations.

On July 1, the merger became official and the articles of merger were filed with the Massachusetts Secretary of State (R. AMR Exh. 1). As a result of the merger, Respondent AMR added 30 new station locations throughout Massachusetts to the approximate 30 station locations it already maintained throughout Massachusetts, Rhode Island, Maine, and New Hampshire.

On July 21, the Board consolidated the UC and RC petitions and conducted a representation hearing. During the course of the hearing, Teamsters Local Union 653 and 25 withdrew their respective representation petitions.

On July 29, Respondent AMR granted recognition to the Union as the exclusive bargaining representative of all former Med-Trans and Brewster employees employed in Massachusetts and extended all of the benefits, privileges, and obligations of the collective-bargaining agreement, in effect between the parties, to these employees. As part of the parties' agreement extending recognition, the Union withdrew the petition in Case 1–UC–716 (Jt. Exh. 20).

B. AMR's Organizational Structure

After the acquisition, AMR's central headquarters located in Aurora, Colorado, began the process of reorganizing its nationwide operation. For this purpose, the United States was broken down into four specific groups consisting of the western group, which includes divisions 1, 2, 3, and 4; the central group which is made up of divisions 5, 6, 7, 8, 9, and 10; the eastern group includes divisions 11, 12, 13, and 14; and the southern group contains divisions 15, 16, 17, 18, 19, 20, and 21.

The subject case concerns employees located in division 12 and 13. The Commonwealth of Massachusetts falls within division 12 and 13 and was split in half primarily because of call volume and revenues among divisional lines. Division 12 covers eastern Massachusetts, Maine, Vermont, New Hampshire, and Rhode Island. It is further divided by regions including the north, central, and south regions. Division 13 covers western Massachusetts including the Worcester area, Connecticut, and New York.

Division 12 headquarters is located in Natick, Massachusetts, while division 13 headquarters is in New Haven, Connecticut. Effective May 5, division 12 is identified as AMR Northeast and division 13 is known as AMR New York/Southern New England. Division 12 has approximately 2500 employees while division 13 has around 3000 employees. There are

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[1] All dates are in 1997 unless otherwise indicated.

[2] The charges in Cases 1–CA–35599 and 1–CB–9105, filed by Sheila O'Malley, were withdrawn prior to the opening of the subject hearing and are not part of this decision.

[3] Respondent IAEP, based on Board certifications, is the exclusive collective-bargaining representative for the Chaulk and ASA employees (Jt. Exhs. 9 and 22).

around 300–350 employees in the Worcester area that is part of division 13. Within division 13 there are eight current collective-bargaining agreements, in effect, between Respondent AMR and various labor organizations.4 Additionally, in division 13, Respondent maintains and operates several nonunion stations, including North Hampton, Massachusetts, Bridgeport, Waterbury, and Southington, Connecticut, and Farmington and Ronkonamha, Long Island, New York.

Both divisions 12 and 13 are headed by a separate divisional CEO, who supervise directors or vice presidents in charge of human resources, logistics, support services, operations, financial services, corporate development, education services, continuous quality improvement, and patient account information.

C. Emergency Medical Services

The Office of Emergency Medical Services (EMS) is the agency in the Commonwealth of Massachusetts designated by statute to oversee, coordinate, and regulate emergency medical services. For this purpose, five regional EMS councils are designated for coordinating the delivery of EMS within its geographic boundaries. Within each of the regions are local regions referred to as consortiums. Each advanced life support (ALS) ambulance service is required by regulation to have an affiliation agreement with a hospital and that affiliation agreement identifies a medical director who is responsible for the medical direction of the paramedics within the system. Paramedics are required to credential with a specific medical director.

Respondent AMR employs approximately 1500 EMTs and 300 paramedics within division 12, who provide emergency medical services to patients located within the geographic boundaries of the division. All EMS employees must operate under the license of a physician since they are certified and do not hold a license. After the merger the medical director for Respondent AMR, Dr. Assaad J. Sayah, assumed responsibility for the training and education of former Med-Trans and Brewster employees as they were now operating under his license. Training to achieve EMT status requires 500 hours while paramedics receive approximately 2000 hours of training before being certified in Massachusetts. After reaching basic EMT status, employees can advance to EMT intermediate and then progress to the paramedic classification. In order to perform medical services within each of the regions or local consortiums, paramedics must be individually credentialed within those locations and are not permitted to perform emergency medical services in regions or consortiums that they are not credentialed.

In an EMS system, response time is the single most critical issue in the provision of emergency medical care. The system of parking emergency vehicles at fire stations or at fixed EMS locations that predominated through the 1970s has been replaced by the concept of system status management. Under that concept, an analysis of call volume is used to apply staffing patterns and vehicles are posted at various locations to increase response time to handle demand. Each ambulance crew is assigned and reports to a station location to pick up their vehicle and are then posted to different locations.

D. Events After the Acquisition

Respondent AMR made a number of changes to its organization and commenced a structured program of consolidation after the February 19 acquisition. For example, a number of station locations were closed or downsized when original AMR station locations were geographically proximate to former Med-Trans or Brewster station locations. Employees at these locations were either temporarily transferred or permanently assigned to new station locations, so that in a number of circumstances original AMR employees work at the same station location along side former Med-Trans or Brewster employees (GC Exh. 20). For example, the Hyde Park station location contains approximately 189 original AMR employees and approximately 88 former Brewster employees. Likewise, in certain station locations, former Med-Trans and Brewster employees now partner with original AMR employees. Thus, in a number of station locations, there is daily contact among original AMR and former Med-Trans and Brewster employees. Such contact also occurs when ambulance crews respond to the same call, when an ALS/BLS intercept occurs,5 and when emergency situations require multiple vehicles to respond to the same call. Additionally, based on operational necessity, employees are temporarily transferred between 1 and 30 days from their permanently assigned location to another station location either physically reporting into that station location to receive work assignments or receiving radio dispatched calls while in their vehicle from the new station location. At the end of each work shift, employees that are temporarily transferred into another station location return to their home base and are given instructions for their next work assignment that might include reporting back to that same temporarily assigned station location, reporting to another nearby station location or remaining within the boundaries of their permanently assigned station location.

Effective with the February 19 acquisition, Respondent AMR began the task of restructuring its operation both on a national and divisional basis. On a national basis, common standardization of payroll functions, fleet purchase and maintenance of vehicles, procurement of medical supplies, standardization of a common uniform, and centralization of human resource functions were undertaken. Some of these changes were slowed because they had to be approved by the Federal Government including employee 401(k) plans and medicare and medicaid approval for billing purposes. The payroll operation for 26,000 employees needed to be centralized and this is the reason that former Med-Trans and Brewster employees continued to receive paychecks throughout 1997 under the logo of their former employer with all employees receiving their W-2 tax forms for that year from Respondent AMR's headquarters in Colorado.

As it relates to division 12, former managerial and supervisory personnel of original AMR and former Med-Trans and Brewster entities are unified into one management structure. Thus, in a number of station locations, original AMR supervisors supervise former Med-Trans and Brewster employees while former Med-Trans and Brewster supervisors supervise original AMR employees.

Hiring is centralized in Natick, new employee interviewing and orientation takes place in Hyde Park, and disciplinary standards are uniform for all employees. While all employees continued to wear their former uniforms until they were fitted and wore a standardized uniform after August 1997, they received an AMR patch in early spring 1997, to be affixed on their uniforms. On a staggered basis, all vehicles were repainted to reflect the AMR logo and new station location signs were completed. All billing and accounts payable are consolidated in the Natick office and all vendors were notified of the change. The dispatch function for vehicles and chair cars, fleet maintenance, procurement of materials and the marketing function all became centralized within the division. Training for refresher courses is centralized in Hyde Park and mandatory training and monthly station meetings take place at various station locations for original AMR employees along side of former Med-Trans and Brewster employees.

III. ANALYSIS AND CONCLUSIONS

A. The Arguments of the Parties

The General Counsel alleges in paragraphs 7(a) and (b) of the complaint that Respondent AMR violated Section 8(a)(1), (2), and (3) of the Act by extending recognition to Respondent IAEP and Local 1 as the exclusive bargaining representative in an inappropriate unit consisting of original represented AMR employees and formerly unrepresented Med-Trans and Brewster employees, and by applying the terms of the existing collective-bargaining agreement to the unit employees. It further alleges in paragraphs 9(a) and (b) of the complaint that Respondent IAEP and Local 1, by obtaining recognition from Respondent AMR and applying the terms of the existing collective-bargaining agreement to the unit employees, independently violated Section 8(b)(1)(A) and (2) of the Act. The General Counsel further argues that the overall unit is not presumptively appropriate under any Board standard. In this regard, the General Counsel relies on the fact that the unit is not employerwide nor is it an administratively divided unit as recognition was extended to include areas both in AMR's divisions 12 and 13, with the later

[4] They include the subject agreement covering EMTs and paramedics in the Worcester area, the agreement with the Office and Professional Employees International, Local 6, covering EMTs and paramedics in the Springfield area (Jt. Exh. 21), the negotiation of an agreement with the Service Employees International Union, Local 285, covering EMTs and paramedics in the Pittsfield area pursuant to its December 2 certification, and the remaining five agreements are for EMTs and paramedics located in Connecticut and New York.

[5] In an EMS model system, a paramedic equipped vehicle responds to assist an ambulance with EMTs who are qualified only to give basic life support (BLS) assistance.

division including both represented and unrepresented employees at certain station locations. In addition, under the accretion principles established by the Board, the employees have retained their own identity such that they could appropriately be included in another unit. Moreover, there is not a substantial community of interest to properly include the formerly unrepresented Med-Trans and Brewster employees in the existing unit. Thus, it is inappropriate to disenfranchise the approximate 760 former unrepresented employees from there right to select or not select a representative of their own choosing.

Respondent AMR opines that it extended recognition consistent with the terms of the parties' preexisting collective-bargaining agreement, and the original AMR employees still constitute a majority of the employees in the appropriate bargaining unit. It further argues that the purpose of the acquisition was to provide efficient and cost effective service in a very competitive environment and in order to accomplish this purpose, all of the traditional community-of-interest factors were met. In this regard, Respondent AMR integrated its operations, centralized labor relations and the prior identity of former Med-Trans and Brewster employees has been, essentially, obliterated. Further, wages have been raised to bring the previously unrepresented employees to parity with other employees under the collective-bargaining agreement and other terms and conditions of employment have been standardized.

Respondent AMR and Respondent IAEP in denying that the Act has been violated assert that this is a paradigmatic case in that the Board has not addressed the principles of accretion in the context of emergency medical services. They point to a line of cases in the package delivery and public utilities industries as instructive in determining the appropriateness of the unit and the extension of recognition in the subject case.

B. Board Case Law

In *Baltimore Gas & Electric Co.,* 206 NLRB 199 (1973), the Board described the rationale for its view that, in general, systemwide units are optimal in the public utility industry:

> As the parties are aware, the line of Board precedents developed for the public utility industry contains frequent expression of the Board's view that a systemwide unit is the optimal appropriate unit in the public utility industry and of the strong considerations of policy which underlie that view. That judgement has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations. It has done so only when there was compelling evidence that collective bargaining in a unit less than systemwide in scope was a "feasible undertaking" and there was no opposing bargaining history. As an examination of the cases in which narrower units have been found appropriate indicates, it was clear in each case that the boundaries of the requested unit conformed to a well-defined administrative segment of the utility company's organization and could be established without undue disturbance to the company's ability to perform its necessary functions. 6

The Board follows a restrictive policy in finding accretion because it forecloses the employees' basic rights to select their own bargaining representative. *Towne Ford Sales,* 270 NLRB 311 (1984); *Melbet Jewelry Co.,* 180 NLRB 107 (1970).

Accretion is not applicable to situations in which the group sought to be accreted would constitute a separate appropriate bargaining unit. *Passavant Health Center,* 313 NLRB 1216 (1994). The Board will find a valid accretion when the extended recognition involves employees who have little or no separate group identity and when the additional employees share an overwhelming community of interest with the pre-existing unit. *Super Valu Stores,* 283 NLRB 134, 136, (1987); and *Safeway Stores,* 256 NLRB 918 (1981).

The Board when considering the appropriateness of accreting employees into an established bargaining unit, evaluates the following factors: "the integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control over labor relations, collective bargaining history and interchange of employees." *TRT Telecommunications Corp.,* 230 NLRB 139, 141 (1977).

Lastly, the Board has held that unit clarification and accretion principles are applicable to merged operations involving represented and unrepresented employees. *Armco Steel,* 312 NLRB 257, 259 (1993); and *Central Soya Co.,* 281 NLRB 1308 (1986).

C. Conclusions

1. The appropriate unit

The subject case presents an opportunity to determine whether Respondent AMR extended recognition in an inappropriate unit, whether a systemwide unit is the optimal appropriate unit as found in the public utility industry or as the Board has held a narrower unit is appropriate when it is clear that the unit conforms to a well-defined administrative segment of the organization and could be established without undue disturbance to the Company's ability to perform its necessary functions.

The facts in this matter establish that all original AMR and former Med-Trans and Brewster employees are subject to the same companywide policies, practices, and procedures. In the main, all terms and conditions of employment, specifically including hours, wage rates, wage progressions, fringe benefits, work rules, job classifications, and duties within those classifications are instituted and determined on a divisionwide basis. It is undisputed that each AMR division maintains strict control over virtually all aspects of operations and labor relations throughout its geographic boundaries, and maintains uniform control over scheduling and routes assigned to its employees. Division personnel spend a substantial amount of time visiting the station locations where they review routes and monitor compliance with all of AMR's policies and procedures. All of AMR's employees including former Med-Trans and Brewster personnel wear identical patches and, after August 1, the same uniforms, drive the same type of vehicle, perform the same work duties, are subject to the same work rules and receive the same benefits. Likewise, all employees receive the same annual and sick leave, the same number of holidays, and the national headquarters in Colorado handles their payroll.

Each division plays an important role in hiring, firing, and transferring employees, and centralizes the format and language to be used in advertisements for new hires. New employee orientation and interviewing is centralized within each AMR division. Training and staff meetings are centralized by division and involve contact among original AMR and former Med-Trans and Brewster employees. Contact among employees also occurs when the crews respond to the same call and in a situation requiring multiple vehicles to respond to the same emergency call. Transfers also require the approval of division personnel. In this regard, temporary transfers from one station location to another from 1 to 30 days in duration occur on a regular basis. Thus, EMTs and paramedics are transferred from their permanent station location to other nearby station locations either physically reporting into that station to receive work assignments or they receive radio dispatched assignments while in their vehicles from the new station location. At the completion of the daily work shift, employees return to their permanently assigned station location and receive their work assignments for the next shift which might include returning to the same temporarily assigned station location, being sent to another nearby station location or remaining within the boundaries of their permanently assigned station location.

In view of the factors discussed above, I conclude that a bargaining unit limited to AMR's division 12 employees rather than an employerwide unit is appropriate in the subject case. I reach this decision based on the high degree to which AMR's operations are integrated as a result of demands for time-sensitive response time, the overlapping and common supervision under which EMTs and paramedics routinely work, the contact among original AMR and former Med-Trans and Brewster employees in individual station locations throughout division 12, the uniformity of EMT's and paramedics' working conditions and duties, and the broad authority over daily operations and labor relations exercised by division 12 personnel.

[6] In *Purolator Courier Corp.,* 265 NLRB 659 (1982), the Board concluded that the courier-guards in the Employer's south-central region rather than a single location unit at one location was appropriate for collective-bargaining purposes. In this regard, all of the Employer's courier-guards wear identical uniforms, drive the same type of vehicle, perform the same work duties, and are subject to the same work rules and enjoy common wage scales, increases, vacation benefits, and paid holidays all of which are determined by the national headquarters.

Based on this finding, it follows that when Respondent AMR extended recognition to Respondent IAEP for the employees located in division 12, it was a legitimate and lawful exercise and did not contravene the Act. Indeed, the original AMR employees still constitute a numerical majority when the former Med-Trans and Brewster employees are included in the division 12 unit. *Central Soya Co.,* supra. On the other hand, the facts establish that the extension of recognition reaches across divisional boundaries and includes former Med-Trans employees located in the Worcester area that is part of division 13.

The record establishes that AMR has eight separate collective-bargaining agreements with various labor organizations including the subject Union in division 13. Additionally, it is undisputed that division 13 contains unrepresented employees in stations including North Hampton, Massachusetts; Bridgeport, Waterbury, and Southington; Connecticut; and Farmington and Ronkonamha, Long Island, New York. I find that the former Med-Trans employees in division 13 have retained their own identity such that they could appropriately be in another bargaining unit and do not share a community of interest with employees in the division 12 unit. Under these circumstances, and particularly noting my finding that AMR divisions are appropriate administrative segments, the extension of recognition to those former Med-Trans employees located in division 13 contravenes the Act.

Therefore, I find that when Respondent AMR extended recognition to Respondent IAEP for the former division 13 Med-Trans unrepresented employees and Respondent IAEP acquiesced, Respondent AMR violated Section 8(a)(1) and (2) of the Act and Respondent IAEP violated Section 8(b)(1)(A) of the Act. Contrary to the General Counsel, I do not find that Respondent AMR extended recognition to Local I as the exclusive collective-bargaining representative. In this regard, both the July 29 extension of recognition (Jt. Exh. 20), and the parties' collective-bargaining agreement (Jt. Exh. 1), conclusively establish that only Respondent IAEP obtained recognition for the employees in the unit. Thus, Local 1 did not violate Section 8(b)(1)(A) of the Act, and I recommend that those allegations be dismissed.

2. The collective-bargaining agreement

The General Counsel alleges in paragraph 7(b) of the complaint that Respondent AMR has extended, maintained, and enforced a collective-bargaining agreement, containing a union-security clause, with Respondent IAEP and/or Local 1 covering the employees in the unit in violation of Section 8(a)(1) and (3) of the Act. Additionally, the General Counsel alleges in paragraph 9(b) of the complaint that Respondent IAEP and/or Local 1 has maintained and enforced a collective-bargaining agreement with Respondent AMR covering the employees in the unit in violation of Section 8(b)(2) of the Act.

There is no dispute that the July 29 recognition agreement provides that AMR voluntarily agrees to recognize the Union as the exclusive bargaining representative for all its employees, including the former Med-Trans and Brewster employees, and to extend all of the benefits, privileges, and obligations of the collective-bargaining agreement, in effect between the parties, to its employees. Likewise, record testimony indicates that wages of former Med-Trans and Brewster employees were raised to the minimum level required in the parties' agreement to conform with those wage rates paid to original AMR employees, and certain former unrepresented employees after July 29, used the services of the Union for representational purposes under the parties' agreement.

Under these circumstances, I find that Respondent AMR and Respondent IAEP violated Section 8(a)(1) and (3) and 8(b)(2) of the Act when the parties' collective-bargaining agreement was extended to cover the wrongly accreted employees in division 13. *Mego Corp.,* 254 NLRB 300 (1981). Consistent with my above finding, I do not find that Local 1 maintained and enforced the parties' collective-bargaining agreement and recommend that those allegations in the complaint be dismissed.

In regard to the union-security provisions contained in the parties' agreement, credible testimony establishes that the provisions of the union-security clause are not being enforced. Thus, no dues have been paid to the Union, no employee has been required to become a member of the Union, and the Union has not requested AMR to terminate any employee for the refusal to tender periodic dues and initiation fees. According to the Board, however, this is not dispositive. Thus, in *Combustion Engineering,* 195 NLRB 909 (1972), the Board held that the fact that an employer expressed its intention to wrongfully accreted employees that the union-security provisions applied to them, violates the Act. In the subject case, the evidence shows that Olson told employees that Respondent would terminate employees for failing to pay union dues and Respondent IAEP sent correspondence stating that each employee must be a dues paying member to maintain employment. Accordingly, I find that Respondent AMR and IAEP violated Section 8(a)(1) and (3) and 8(b)(2) of the Act when they expressed their intention to extend the union-security provisions contained in the parties' agreement to the wrongly accreted employees in division 13. Consistent with my above finding, I do not find that Local 1 maintained and enforced the parties' collective-bargaining agreement including the union-security provisions and recommend that those allegations in the complaint be dismissed.

3. The status of Respondent AMR as a health care institution

During the course of the hearing, counsel for Respondent AMR and IAEP asserted that AMR might be a health care institution as defined in Section 2(14) of the Act, and therefore, should benefit from the congressional admonishment against the undue proliferation of bargaining units in the health care field.

While not dispositive to the underlying issues in this case, I find that the definition of a health care institution in Section 2(14) of the Act does not specifically include ambulance companies.[7] Thus as the Board held in *Albuquerque Ambulance Service,* 263 NLRB 1 (1982), ambulance services are merely engaged in the business of transporting patients to health care institutions, and are not themselves health care institutions as defined in the Act. This specific finding was not disturbed by the United States Court of Appeals for the 10th Circuit in *Albuquerque Ambulance Service v. NLRB,* 736 F.2d 1332 (10th Cir. 1984).

CONCLUSIONS OF LAW

1. Respondent AMR is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent IAEP and Local 1 are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent AMR engaged in violations of Section 8(a)(1) and (2) of the Act by granting recognition to Respondent IAEP as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's division 13.

4. Respondent IAEP engaged in violations of Section 8(b)(1)(A) of the Act when it obtained recognition from Respondent AMR as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's division 13.

5. Respondent AMR engaged in violations of Section 8(a)(1) and (3) of the Act when it extended, maintained, and enforced a collective-bargaining agreement containing union-security provisions with Respondent IAEP covering certain former unrepresented Med-Trans employees in AMR's division 13.

6. Respondent IAEP engaged in violations of Section 8(b)(2) of the Act when it extended, maintained, and enforced a collective-bargaining agreement containing union-security provisions with Respondent AMR covering certain former unrepresented Med-Trans employees in AMR's division 13.

7. Local 1 did not engage in violations of Section 8(b)(1)(A) or (2) of the Act. It did not obtain recognition from Respondent AMR as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's division 13 nor did it extend, maintain, or enforce a collective-bargaining agreement containing union-security provisions with Respondent AMR covering certain former unrepresented Med-Trans employees in AMR's division 13.

8. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent AMR and Respondent IAEP have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[7] In *Lifeline Mobile Medics, Inc.,* 308 NLRB 1068 (1992), although the Regional Director found that the employer, an ambulance service, is a health care institution under Sec. 2(14) of the Act, the Board did not address that issue as no party requested review of that finding.

[Recommended Order omitted from publication.]